

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**Docket Number (Optional)
206,228First named inventor: UlyettApplication No.: 10/653,805

NOV 06 2009

Art Unit: 3634Filed: September 2, 2003Examiner: Johnson, Blair M.Title: Retractable Cover With Biasing Mechanism For Covering Structures

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional

1. Petition Fee

☒ Small entity-fee \$ 810.00 (37 CFR 1.17(m)). Application claims small entity status. See 37 CFR 1.27.

☐ Other than small entity-fee \$ _____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in
the form of Amendment

11/06/2009 HAL133 00000024 010035 10653805

01 FC:2453 810.00 DA

(identify type of reply):

☐ has been filed previously on _____.

☒ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ _____.

☐ has been paid previously on _____.

☐ is enclosed herewith.

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This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

Robert B. Smith
Signature

Robert B. Smith

Type or Printed name

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New York, NY 10017

Address

November 2, 2009

Date

28,538

Registration Number, If applicable

212 885-9237

Telephone Number

Enclosures:

- ☒ Fee Payment ~~_____~~
- ☒ Reply
- ☐ Terminal Disclaimer Form
- ☒ Additional sheets containing statements establishing unintentional delay
- ☐ Other: _____

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

- ☒ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.
- ☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

November 2, 2009

Date

Robert B. Smith
Signature

Robert B. Smith

Typed or printed name of person signing certificate

Additional Sheet: Petition To Revive Unintentionally Abandoned Application No. 10/653,805

The present application became abandoned on March 13, 2008, for failure to respond to Office Action mailed on December 13, 2007. Thus, the application has been abandoned for a period of more than one (1) year.

M.P.E.P. 711.03(c) provides that, in the case of a Petition to revive an unintentionally abandoned application which is filed more than one year after the abandonment occurred, the applicant must provide (a) a showing as to when the applicant first became aware of the abandonment; and (b) a showing as to how the delay in discovering the abandonment occurred despite the exercise of due care.

The former associate who previously handled this case no longer works at the firm. Based on the contents of the file, such associate duly advised New Zealand counsel of the December 13, 2007 Office Action and of the final date for reply.

As of June 4, 2008, our office had not yet received instructions from New Zealand counsel for responding to the December 13, 2008 Office Action. On such date, the former associate prematurely instructed our docketing department to close the file and remove the 6 month response due date from our docketing system. The reason he provided for closing the file were, "abandoned due to lack of instructions from client to respond to the office action despite repeated reminders." In other words, he was anticipating that, because he had not received instructions to date, he would not be receiving instructions and that the client was intending to abandon the case. He did not himself take any action to abandon the case, however.

Our docketing department generates and distributes weekly docketing reports to attorneys on Monday of each week (excepting holidays). Because our docketing department removed the 6 month date for this case on or about June 4, 2008, the docketing report for the week of June 9, 2008 would not have reflected that the 6 month date for response to the Office Action in this application would expire on Friday, June 13, 2009.

Our office received faxed instructions from New Zealand counsel for responding to the December 13, 2007 Office Action on Thursday, June 12, 2008, i.e., one day prior to the expiration of the 6 month statutory period. The instructions included a request to make substantial claim amendments, most of which needed to be drafted by our office.

As noted above, at the time our office received fax instructions to file a response to the December 13, 2007 Office Action, the 6 month due date was no longer on our docketing system.

Also, the faxed instructions did not reference the fact that the 6 month due date was the following day.

The first indication of when such former associate first saw the June 12, 2008 fax is in a memo dated Monday, June 16, 2008, i.e., after the case became finally abandoned. In such memo, such former associate instructed our docketing to reopen the file and mark it, "received late instructions from client to respond to the office action, so application revived after abandonment."

Such associate left the firm in August 2009. There is no indication in the file that, as of June 16, 2008, the date upon which he wrote the memo to docketing, he had in fact prepared or filed a Petition to Revive. Evidently he either thought he had done so or was planning to do so that day.

Because the former associate had advised our docketing department that he had already taken steps to revive the application, he would not have received any reminders from the docketing department that a petition to revive needed to be prepared.

On October 29, 2009, New Zealand counsel sent a status inquiry by e-mail. Such e-mail includes two earlier e-mails: (1) on February 11, 2009, New Zealand counsel sent a status inquiry by e-mail to the former associate; and (2) on February 13, 2009, such former associate advised New Zealand counsel by return e-mail that he had "filed a response" to the last Office Action, but had not received a response from the PTO. The fact that he stated that he was awaiting a "response" from the PTO, rather than stating that he was awaiting another Office Action, indicates that he was awaiting a response to the petition to revive that he thought he had filed.

At the time we received the October 29, 2009 e-mail from New Zealand counsel, neither the February 11, 2009 e-mail nor the February 13, 2009 response were in our file. It therefore appears that such former associate did not actually review the file when preparing his February 13, 2009 response, but rather responded from (a faulty) memory.

Based on a review of cases assigned to such former associate, as of June 16, 2008, the time when he advised docketing that steps to revive had been taken, he had a full prosecution docket and was handling many cases, for many different clients, at the same time. It therefore appears that his belief that he had petitioned to revive the case occurred through confusion or

distraction by other matters. As noted above, as of February 2009, he still believed that he had filed the petition to revive and was awaiting a decision.

In sum, the applicant never intended to abandon the application, and in fact provided instructions to respond to the December 13, 2008 Office Action prior to the expiration of the 6 month date. The initial abandonment occurred due to the fact that the former associate of this firm either did not himself receive (or at least did not review) last-minute instructions from New Zealand counsel until after the expiration of the 6 month date, or received such instructions but did not initially remember that the 6 month date expired the following day (due to the fact that such 6 month date did not appear on that week's docket report, and was not mentioned in the faxed instructions).

With regard to the closing of the file on June 4, 2008, the former associate did not make a decision to abandon the file. It is evident that he was merely anticipating that the client was not going to send instructions, i.e., anticipating that the client was going to abandon the case. And, while his assumption was error, and while his instructions to remove the 6 month date from our docket may have contributed to the initial abandonment, the abandonment was not "intentional."

The delay in filing a grantable petition to revive, after the initial abandonment, occurred because, since there was no longer a fixed due date, there was no response date on our docketing system, and because such associate mistakenly believed he had already filed a petition to revive.

This is a case where multiple things went wrong. However, neither the applicant, nor the applicant's New Zealand counsel, nor our office, ever decided to abandon the application. And, while our former associate at one point realized that the case had gone abandoned, he mistakenly thought that he had taken action to revive it. It was only recently that our office became aware that the case had never been revived and is still abandoned.

For such reasons, the applicant respectfully submits that the abandonment, as well as the entire period of delay from the date of abandonment until the filing of this petition, was "unintentional."